

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Notice of Proposed Rulemaking)	
)	
Appropriate Regulatory Treatment for)	CS Docket No. 02-52
Broadband Access to the Internet Over)	
Cable Facilities)	
)	

COMMENTS OF THE COUNTY OF LAKE, ILLINOIS

These comments are filed by the County of Lake, Illinois ("Lake County") in support of the comments filed by the Alliance of Local Organizations Against Preemption (the "Alliance"). Like the Alliance, Lake County believes that (a) local communities should be able to require cable operators to obtain additional authorizations to use and occupy public rights of way to provide cable services; (b) should be able to enforce existing authorizations that have been granted for the service; (c) should be able to obtain fair and reasonable compensation for use and occupancy of the public rights of way to provide non-cable services; and (d) should be able to regulate cable companies in their provision of non-cable services, as provided under the Cable Act.

These comments will also provide information regarding the status of cable modem service in our community.

1. **The Lake County community and the status of cable modem service.**

Lake County is a county of 644,356 residents according to the 2000 U.S. Census . Of this total, 83,916 people reside in unincorporated Lake County. AT&T Broadband serves incorporated and unincorporated Lake County, with approximately 15,000 of its subscribers in unincorporated Lake County. The cable system serving Lake County offers subscribers varied services and channels depending on location due to the uncompleted status of the system rebuild. All unincorporated areas receive a minimum of 85 channels. The cable system in unincorporated Lake County is being upgraded, and once

it is upgraded, cable modem service will be offered throughout this community based on the franchise agreements and the cable company's announced intentions.

2. Lake County franchises and cable modem service.

There are currently four cable franchises for different sections of unincorporated Lake County which were originally granted to differing cable providers. The most recent cable franchise was granted in 1999 and, additionally, required the cable operator to provide cable modem service throughout unincorporated Lake County:

Grantee shall offer to its Subscribers an interactive connection between the Subscriber network and the Internet at such time when such connection becomes available to the Grantee, but no later than eighteen (18) months from the effective date of this Agreement. In the event that the Grantee is not able to provide such interactivity by the aforementioned date, the Grantee may seek permission from the Franchising Authority to delay introduction of such service for a limited duration. Such permission shall not be unreasonably withheld. Upon availability of interactive Subscriber network service to the Internet, Grantee may offer to its Subscribers appropriate cable modem devices in order to enable Subscriber terminal interface between the Cable System and the Subscriber's computer and/or television set. Grantee shall make Internet connection available to its residential, business, governmental, educational, and institutional Subscribers. (Section 40, D, Cable Television Franchise Agreement, Lake County, Illinois and U.S. Cable of Lake County, L.P. d/b/a TCI of Northeast Illinois, May 11, 1999)

Pursuant to this provision, Lake County is entitled to receive franchise fees on both cable service and cable modem service. The county has received payments for cable modem franchise fees in consideration of the grant of the franchise. Our franchises and cable television franchise ordinance were written to permit the operator to provide both cable services and other services, as long as the operator complied with the franchise terms:

"Cable Service" means the one-way transmission to subscribers of video programming or other programming service and subscriber interaction, if any, which is required for the selection or use of such programming or other programming service. This definition does not authorize, and shall not be construed, interpreted, or applied to authorize, the use of the Cable System for telephone, data, or voice communication services, unless specifically authorized and/or required pursuant to any franchise granted by the county pursuant to this ordinance. (Lake County Cable Television Franchise Ordinance, July 14, 1998)

It is estimated that Lake County will lose \$250,000 to \$500,000 over the next five years if fees on revenues from cable modem service are discontinued. To date, neither the franchise requirements nor the fees have prevented or delayed the roll-out of cable modem service in our community.

3. Regulation of cable modem service.

Lake County regularly receives complaints from customers regarding the services provided by cable operators. These include complaints about traditional video programming services and about cable modem services. Although the number of filed complaints regarding cable modem service is less than those for regular cable service issues, those numbers are expected to increase as the service is expanded in unincorporated Lake County. Responding to these complaints requires significant staff time and effort.

There are many unique customer service problems associated with cable modem services. In addition, it is often difficult, if not impossible, to separate regulation of cable modem service from the regulation of cable service in many critical respects: in unincorporated Lake County, cable modem service is marketed jointly with cable service, and a customer may call a single location to schedule installation of cable service and cable modem service. Customer complaints regarding installations and missed appointments may relate to both services.

As a result, problems with one service may affect the quality of the other service. Customers are advised on their bill by the cable operator to call Lake County with complaints. It appears that, at no time does the operator advise the customer that protections accorded with respect to cable service do not apply with respect to cable modem service. There is a substantial and continuing need to protect consumers of cable modem service, in light of the complaints received, and because of its close tie to video services.

Under the Lake County cable franchises, cable modem service is also subject to the following requirements: the operator is required to provide cable modem service throughout its service area; the operator is prohibited from redlining; and the operator is prohibited from discriminating against potential customers.

However, there are also important protections that did apply under the Lake County franchise that may not apply if cable modem service is NOT a cable service. For instance, the operator is required to maintain specific levels of customer service including telephone wait times, payment locations, and installation requirements. Also, the operator is required to credit customer bills for service interruptions.

4. Our rights-of-way and cable modem service.

Lake County local ordinances and cable franchises help to protect and ensure fair access to the county's public rights-of-way. The community has invested significantly in obtaining and maintaining the public right-of-way. Cable systems in unincorporated Lake County require significant upgrades to support the provision of cable modem service and other advanced services. These upgrades have led to an increased amount of work and disruption to the right-of-way by the cable company. Since 1999, the cable company has applied for 73 permits to perform work in the rights-of-way of unincorporated Lake County. It is expected that this number will increase as plans to upgrade the cable plant in unincorporated Lake County move forward. Much of this work would not be required if the cable operator did not plan to provide cable modem service. Supervision of work performed in the right-of-way is not easily distinguishable between different services provided over one system. Issues related to restoration of the right-of-way, safety regulations, and construction activity in the right-of-way relate to both cable service and cable modem service.

5. The Lake County community and broadband deployment.

The Lake County community believes it is very important to encourage broadband deployment and to encourage development of broadband applications. In order to achieve the promise of broadband, broadband has to be available to the entire community, to the highest degree possible. It is critical to avoid knowledge and opportunity gaps created because some parts of the community have access to broadband information, while others do not.

To that end, Lake County devotes significant resources to take advantage of the information highway and to extend its benefits to all. Lake County's franchise agreements require the provision of Internet access and one cable modem to government, school, and library facilities located within unincorporated Lake County for the establishment of a public use terminal in these facilities. The county is working to develop e-government initiatives and provide video streaming of county government meetings on the county website. The funds that we obtain from cable modem franchise fees can help

support these and other activities. If Lake County loses those funds, it will be more difficult to protect consumers and to promote broadband deployment in this community.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Matthew Schuster", written over a horizontal line.

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